

BEFORE THE DIVISION OF INSURANCE

STATE OF COLORADO

Order No. O-11-057

---

**FINAL AGENCY ORDER**

---

IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF  
LEXINGTON NATIONAL INSURANCE CORPORATION,

Respondent.

---

THIS MATTER comes before the Colorado Commissioner of Insurance ("Commissioner") as a result of a market conduct examination conducted by the Colorado Division of Insurance ("Division") of LEXINGTON NATIONAL INSURANCE CORPORATION (the "Respondent"), pursuant to §§ 10-1-204, 10-3-1106, 12-7-108(6), and 12-7-113, C.R.S.

The Commissioner has considered and reviewed the market conduct examination report dated July 14, 2010, ("Report"), relevant examiners' work papers, all written submissions and rebuttals, and the recommendations of staff.

The Commissioner finds and orders as follows:

**FINDINGS OF FACT**

1. At all relevant times, the Respondent was licensed by the Division as a property and casualty insurer.
2. In accordance with §§ 10-1-204, 10-3-1106, 12-7-108(6), and 12-7-113, C.R.S., on July 14, 2010, the Division completed a market conduct examination of the Respondent. The period of examination was January 1, 2008, through December 31, 2008.
3. In conducting the examination, the examiners observed those guidelines and procedures set forth in the most recent available edition of the Market Regulation Handbook adopted by the National Association of Insurance Commissioners. The Commissioner also employed other guidelines and procedures that she deemed appropriate, pursuant to § 10-1-204(1), C.R.S.
4. The market conduct examiners prepared the Report. The Report is comprised of only the facts appearing upon the books, records, or other documents of the

Respondent, its agents or other persons examined concerning Respondent's affairs. The Report contains the conclusions and recommendations that the examiners find reasonably warranted based upon the facts.

5. Respondent delivered to the Division written submissions and rebuttals to the Report.
6. The Commissioner has fully considered and reviewed the Report, all of Respondent's submissions and rebuttals to said report, including but not limited to the Respondent's October 13, 2010 response to the draft market conduct examination report.

### **CONCLUSIONS OF LAW AND ORDER**

7. Unless expressly modified in this Final Agency Order ("Order"), the Commissioner adopts the facts, conclusions and recommendations contained in the Report. A copy of the Report is attached to the Order and is incorporated by reference.
8. Issue A1 concerns the following: Failure, in some instances, to maintain records required for market conduct purposes. This failure constitutes a violation of Division Regulation 1-1-7, Section 4. *(This appears to be a repeat of prior issue H in the findings of the market conduct examination report for 2002.)* The Respondent shall provide evidence to the Division that it has revised its procedures to ensure that all records required for market conduct purposes are retained and can be provided within the required time period. In the market conduct examination for the period January 1, to December 31, 2002, the Company was cited for failure, in some cases, of agents to maintain complete records for market conduct examinations. The violation resulted in Recommendation #16 of Final Agency Order O-04-057, that the "Respondent shall review, revise and implement procedures to ensure that agents maintain complete records for market conduct examinations in compliance with Colorado insurance law." Failure to comply with the previous order of the commissioner may constitute a violation of § 10-1-205, C.R.S.
9. Issue C1 concerns the following: Failure to establish appropriate procedures to maintain a complete complaint log. This failure constitutes a violation of § 10-3-1104, C.R.S., and Colorado Insurance Regulation 6-2-1. The Respondent shall provide evidence to the Division that it has implemented procedures to ensure that its complaint record is maintained in compliance with Colorado insurance law.
10. Issue D1 concerns the following: Failure, in some instances, to appropriately contract with producers. This failure constitutes a violation of §§ 10-2-415.5 and 10-2-416.5, C.R.S. The Respondent shall provide evidence to the Division

that it has implemented procedures to ensure all bail bond agents are contracted and appointed directly with the Company as required by Colorado insurance law.

11. Issue D2 concerns the following: Failure to require that bail bonding agents provide a list of all collateral taken to the insurer within twenty (20) days. This failure constitutes a violation of § 12-7-107, C.R.S. The Respondent shall provide evidence to the Division that it has implemented procedures to require that its agents submit a list of the collateral taken within twenty (20) days of taking the collateral.
12. Issue E1 concerns the following: Failure to include all required information on the collateral receipt. This failure constitutes a violation of §§ 12-7-108, and 12-7-109, C.R.S., and Colorado Insurance Regulation 1-2-14. The Respondent shall provide evidence to the Division that it has implemented procedures to ensure that its collateral receipt includes all required information.
13. Issue E2 concerns the following: Failure to provide a signature line for the bail bonding agent on the promissory note. This failure constitutes a violation of § 12-7-108, C.R.S. The Respondent shall provide evidence to the Division that it has implemented procedures to ensure that its contingent promissory note includes a designated place for the signature of the bail bonding agent as required by Colorado insurance law.
14. Issue E3 concerns the following: Failure to include all required information on its executed/indemnity agreement. This failure constitutes a violation of 12-7-108, C.R.S., and Colorado Insurance Regulation 1-2-14. The Respondent shall provide evidence to the Division that it has implemented procedures to ensure that its indemnity agreements include space for all required information as required by Colorado insurance law.
15. Issue E4 concerns the following: Failure to set forth the terms of release of money or other consideration on the premium receipt. This failure constitutes a violation of 12-7-108, C.R.S., and Colorado Insurance Regulation 1-2-14. The Respondent shall provide evidence to the Division that it has implemented procedures to ensure that its premium receipts set forth the terms of release of money or other considerations as required by Colorado insurance law.
16. Issue F1 concerns the following: Failure to establish underwriting criteria to support the premium charged and to apply such criteria uniformly across all underwritten risk. This failure constitutes a violation of §§ 10-3-1104, 10-4-403, 12-7-108, and 12-7-110.5, C.R.S., and Colorado Insurance Regulation 1-2-15. The Respondent shall provide evidence to the Division that it has established underwriting criteria sufficient to ensure that similarly situated individuals and risks are treated uniformly in the rates that they are charged, and

that it has implemented procedures to ensure that its bail bond producers charge the appropriate, filed premium based on the Company's established underwriting criteria.

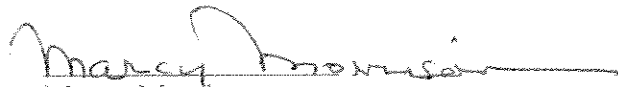
17. Issue G1 concerns the following: Failure, in some instances, to include all required information on the executed/indemnity agreements. This failure constitutes a violation of § 12-7-108, C.R.S. and Colorado Insurance Regulation 1-2-14. The Respondent shall provide evidence to the Division that it has implemented procedures to assure that all executed/indemnity agreements include all information required by Colorado insurance law.
18. Issue G2 concerns the following: Failure, in some instances, to include the signature of the bail bonding agent on promissory notes. This failure constitutes a violation of § 12-7-108, C.R.S. The Respondent shall provide evidence to the Division that it has implemented procedures to ensure the signature of the bail bonding agent is included on all promissory notes as required by Colorado insurance law.
19. Issue G3 concerns the following: Failure, in some instances, to notify the defendant or third-party indemnitor that the promissory notes received had been satisfied. This failure constitutes a violation of § 12-7-108, C.R.S. and Colorado Insurance Regulation 1-2-14. The Respondent shall provide evidence to the Division that it has implemented procedures to notify the defendant or third-party indemnitor that the promissory notes received had been satisfied as required by Colorado insurance law.
20. Issue G4 concerns the following: Failure, in some instances, to include all required information on the premium receipts that were issued by the agents. This failure constitutes a violation of § 12-7-108, C.R.S. and Colorado Insurance Regulation 1-2-14. The Respondent shall provide evidence to the Division that it has implemented procedures to ensure that all required information is included on the premium receipts as required by Colorado insurance law.
21. Issue G5 concerns the following: Failure, in some instances, to enter and/or to enter in sequential order, the premium and collateral receipt numbers on the daily bond register. This failure constitutes a violation of § 12-7-108, C.R.S. and Colorado Insurance Regulation 1-2-14. The Respondent shall provide evidence to the Division that it has implemented procedures to ensure that the premium and collateral receipt numbers are entered in sequential order on the Daily Bond Register, as required by Colorado insurance law.
22. Issue G6 concerns the following: Failure, in some instances, to include all required information on the Disclosure Statement as required in the format prescribed by the Commissioner. This failure constitutes a violation of § 12-7-

108, C.R.S. and Colorado Insurance Regulation 1-2-14. The Respondent shall provide evidence to the Division that it has implemented procedures to ensure that all required information is included on the Disclosure Statements as such form is defined in Appendix C of Colorado Insurance Regulation 1-2-14.

23. Issue G7 concerns the following: Failure, in some instances, to provide property owners with a written disclosure statement at the time of application of the lien against real property. This failure constitutes a violation of § 16-4-104, C.R.S. The Respondent shall provide evidence to the Division that it has implemented procedures to ensure that a written disclosure of the lien against real property is provided to all property owners at the time of application in connection with bonds that are secured by real property as required by Colorado insurance law.
24. Issue G8 concerns the following: Failure, in some instances, to include on all applications a permanently affixed statement regarding fraudulent acts and penalties. *(This appears to be a repeat of prior issue D in the findings of the market conduct examination report of 2002.)* This failure constitutes a violation of § 10-1-128, C.R.S. The Respondent shall provide evidence to the Division that it has implemented procedures to ensure that all applications include *the required verbiage regarding fraudulent acts and penalties as required by Colorado insurance law*. In the market conduct examination for the period January 1, to December 31, 2002, the Company was cited for failure of agents to maintain and provide records to examiner. The violation resulted in Recommendation #12 of Final Agency Order O-04-057, stating that "The Respondent shall review, revise and implement procedures regarding the agents' display of required fraud statements on all applications to ensure compliance with Colorado insurance law." Failure to comply with the previous order of the commissioner may constitute a violation of § 10-1-205, C.R. S.
25. The issues and violations described in paragraphs 9 through 25 above are grounds for penalties to be levied pursuant to § 10-1-205(3)(d), C.R.S. The Respondent shall pay a civil penalty to the Division in the amount of three hundred thirty-two thousand and no/100 dollars (\$332,000.00) for the cited violations of Colorado law. Said penalty shall be assessed a 10% surcharge up to \$75,000.00, or \$7,500.00, pursuant to 24-34-108, C.R.S. for a total balance due of \$339,500.00 which will be due to the Division within 30 days of the signing of this Final Agency Order. This surcharge will be used to fund the development, implementation and maintenance of a consumer outreach and education program.
26. Pursuant to § 10-1-205(4)(a), C.R.S., within sixty (60) days of the date of this Order, the Respondent shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related Order.

27. This Order shall not prevent the Division from commencing future agency action relating to conduct of the Respondent not specifically addressed in the Report, not resolved according to the terms and conditions in this Order, or occurring before or after the examination period. Failure by the Respondent to comply with the terms of this Order may result in additional actions, penalties and sanctions, as provided for by law.
28. Copies of the examination report, and this Final Order will be made available to the public no earlier than thirty (30) days after the date of this Order, subject to the requirements of § 10-1-205, C.R.S.

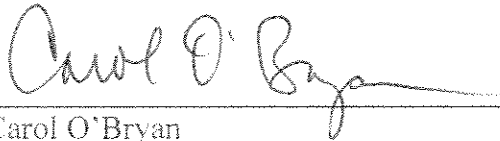
**WHEREFORE:** It is hereby ordered that the findings and conclusions contained in the Report dated July 14, 2010, are hereby adopted and filed and made an official record of this office, and the above Order is hereby approved this 12<sup>th</sup> day of November, 2010.

  
Marcy Morrison  
Commissioner of Insurance

**CERTIFICATE OF MAILING**

I hereby certify that on the 12<sup>th</sup> day of November, 2010, I caused to be deposited the **FINAL AGENCY ORDER NO. O-11-057 IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF LEXINGTON NATIONAL INSURANCE CORPORATION**, in the United States Mail via certified mailing with postage affixed and addressed to:

Brian J. Frank, President  
Lexington National Insurance Corporation  
200 East Lexington Street, Suite 501  
Baltimore, MD 21202



Carol O'Bryan  
Director of Market Regulation  
Division of Insurance